

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

STEPHEN ST. JAMES,)	
)	
Petitioner,)	
vs.)	NO. CIV-09-0247-HE
)	
H.A. LEDEZMA, Warden,)	
)	
Respondent.)	

ORDER


Petitioner Stephen St. James, a federal prisoner appearing *pro se*, filed this action seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2241. The matter was referred to Magistrate Judge Bana Roberts for preliminary proceedings consistent with 38 U.S.C. § 636(b)(1)(B). Respondent moved to dismiss the petition and petitioner has responded. The magistrate judge concluded that the petition raises claims which directly challenge the validity of petitioner's conviction and sentence and hence must be brought pursuant to 28 U.S.C. § 2255. As a § 2255 action must be brought in the district where the challenged sentence was imposed and petitioner was convicted in the District of South Dakota, the magistrate judge recommended that respondent's motion be granted and the petition dismissed for lack of jurisdiction.

The petitioner failed to object to the Report and Recommendation and thus waived his right to appellate review of the factual and legal issues it addressed. United States v. One Parcel of Real Property, 73 F.3d 1057, 1059-60 (10th Cir. 1996); *see* 28 U.S.C. § 636(b)(1)(C); LCvR72.1. Accordingly, the court adopts Magistrate Judge Roberts's

Report and Recommendation [Doc. # 12]. Petitioner's motion for emergency hearing [Doc. # 5] is **DENIED**. Respondent's motion to dismiss [Doc. # 10] is **GRANTED**. The petition for writ of habeas corpus is **DISMISSED WITHOUT PREJUDICE**.

IT IS SO ORDERED.

Dated this 14th day of December, 2009.



JOE HEATON
UNITED STATES DISTRICT JUDGE